

OCTOBER 13, 1999

**APPLICATION OF WILLIAMS  
COMMUNICATIONS, INC. D/B/A VYVX,  
INC. FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY AS A  
COMPETING TELECOMMUNICATIONS  
SERVICE PROVIDER**

**DOCKET NO. 99-00398**

On September 15, 1999, this matter came before the Tennessee Regulatory Authority (“Authority”), upon the Application of Williams Communications, Inc. d/b/a Vyvx, Inc. (“Williams”) for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider throughout the State of Tennessee to offer a full array of telecommunications services within the State of Tennessee (the “Application”). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

Williams' Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service

c **FILE**

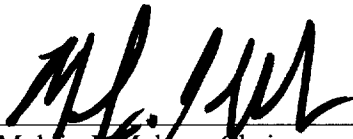
#### **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

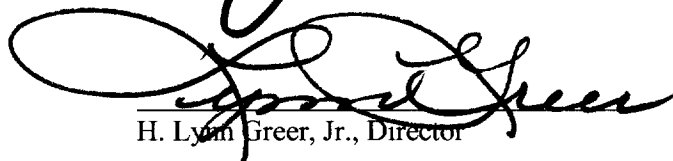
1. Williams has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Williams has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

#### **IT IS THEREFORE ORDERED THAT:**

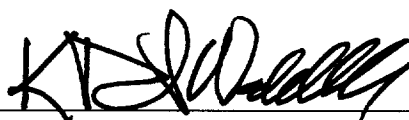
1. Williams' Application is approved as applied.
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary

## INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to hearing.

## WILLIAMS' HEARING

Williams' Application was uncontested. At the hearing held on September 15, 1999, Williams was represented by Mr. Michael Bressman of Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Mr. Mickey S. Moon, Williams' Director of Regulatory Affairs, presented testimony and was subject to examination by the Authority's Directors. Upon Williams' conclusion of proof in its case, the Authority granted Williams' Application based upon the following findings of fact and conclusions of law:

### **I. APPLICANT'S QUALIFICATIONS**

1. Williams is a corporation organized under the laws of the State of Delaware on September 5, 1989 and was qualified to transact business in Tennessee on March 27, 1998.

2. The complete street address of Williams' principal place of business is 2600 One Williams Center, Tulsa, Oklahoma 74172. The phone number is (918) 573-6000 and fax number is (918) 573-0669. Williams' counsel are Henry Walker and Michael Bressman, Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219.

3. The Application and supporting documentary information existing in the record indicate that Williams has the requisite technical and managerial qualifications necessary to provide telecommunications services within the State of Tennessee on a facilities-based and resale basis. Specifically, Williams' management and technical teams have extensive experience

in the telecommunications and utilities industries. Williams owns and operates more 20,000 route miles of fiber. Moreover, Williams is authorized to provide telecommunications services on a facilities-based and/or resale basis in all fifty states.

4. Williams has the necessary capital and financial qualifications to provide the services it proposes to offer.

5. Williams has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. PROPOSED SERVICES**

1. Williams intends to offer a full range of telecommunications services throughout the State of Tennessee on a facilities-based and resale basis. Specifically, Williams intends to provide local exchange, interexchange (including interLATA and intraLATA), exchange access, and switched and special access telecommunications services. Williams intends to construct extensive fiber-optic facilities in the State of Tennessee. Initially, Williams plans to offer its interexchange services to other telecommunications carriers and Internet service providers.

2. Except as may be authorized by law, Williams does not intend to provide local exchange service in any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 65-4-201(d).

## **III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the Application and the record in this matter, the Authority finds that approval of Williams' application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.